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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 MERIDIAN RAPID DEFENSE GROUP
13 LLC, a California limited liability
company,

14 Plaintiff,

15 vs.

16 DELTA SCIENTIFIC CORPORATION,
17 a California corporation,

18 Defendant.

19 DELTA SCIENTIFIC CORPORATION,
20 a California corporation,

21 Counterclaimant,

22 vs.

23 MERIDIAN RAPID DEFENSE GROUP
24 LLC, a California limited liability
company, and PETER D. WHITFORD,
an individual,

25 Counterdefendants.
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Case No. 2:23-cv-07222-GW (PDx)

**NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF
DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
VOLUNTARY DISMISSAL OF
ITS CLAIMS PURSUANT TO
FED. R. CIV. PROC. 41(a)(2)**

Hon. George H. Wu

1 Defendant Delta Scientific Corporation (“Delta”) submits this Notice of
2 Supplemental Authority to bring to the Court’s attention new persuasive authority
3 relevant to Delta’s Opposition to Plaintiff’s pending Motion for Voluntary
4 Dismissal of Its Claims Pursuant to Fed. R. Civ. Proc. 41(a)(2), which was heard
5 on September 16 and again on September 30 and is currently under submission.
6 (See Dkts. 120 (Delta’s Opposition), 134 (Tentative Ruling), 136
7 (Order Continuing Matter), and 144 (Order stating this Motion as
8 “TAKEN UNDER SUBMISSION”)).

9 The case of *Prepared Food Photos, Inc. v. Pool World, Inc.*, No. 2:23-CV-
10 0160-TOR, 2024 WL 4344955 (E.D. Wash. Sept. 30, 2024)¹ supports Delta’s
11 arguments at pages 9–10 and 13–15 (ECF pages 16–17 and 20–22) of its
12 Opposition (Dkt. 120) to Plaintiff’s Motion for Voluntary Dismissal, specifically
13 that “Meridian’s attempt to dismiss its claims without prejudice is an attempt to
14 preclude Delta’s forthcoming fee motion by preventing Delta from receiving its
15 rightfully earned prevailing party status. This is legal prejudice warranting
16 dismissal with prejudice.” (footnote omitted). This case is also relevant to the
17 Court’s tentative ruling (Dkt. 134) at pages 2–3 (ECF pages 3–4).

18 In *Prepared Food Photos*, the case was stayed relatively early in the
19 proceedings so the parties could seek resolution through a court mediated
20 settlement conference. *Id.* at *1. After the parties were unable to reach an
21 agreement, the plaintiff sought to dismiss its copyright infringement action
22 “without prejudice and without the requirement Plaintiff pay any of Defendant’s
23 attorney’s fees.” *Id.* The Court denied the plaintiff’s motion, requiring the plaintiff
24 to “either move to dismiss this action with prejudice or continue with litigation.”
25 *Id.* at *3. As the sole basis for the Court’s holding, the Court reaffirmed that
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28 ¹ For the Court’s convenience, a copy of the *Prepared Food Photos* case is attached
to this Notice as Exhibit A.

1 post-*Kamal v. Eden Creamery, LLC*, 88 F.4th 1268 (9th Cir. 2023), “a defendant
2 suffers legal prejudice if deprived of the ability to pursue attorney fees when
3 copyright claims are dismissed without prejudice.”² *Id.* at *1–2 (citing *Cadkin v.*
4 *Loose*, 569 F.3d 1142, 1149 (9th Cir. 2009) (voluntary dismissal of copyright
5 claims with prejudice confers prevailing party status on defendants under the
6 Copyright Act while a dismissal without prejudice does not); *Columbia Pictures*
7 *Television v. Krypton Broadcasting of Birmingham*, 152 F.3d 1171, 1172 (9th Cir.
8 1998) (“Feltner is not the prevailing party in this case. Therefore, as a matter of
9 law, he is not entitled to attorney's fees pursuant to § 505.”); and *U.S. v. Ito*, 472 F.
10 App’x 841, 842 (9th Cir. 2012) (“Without prevailing party status, the Itos were
11 unable to bring their attorney's fees motion under the Civil Asset Forfeiture Reform
12 Act[.] The Itos suffered plain legal prejudice in losing their ability to move for
13 attorney's fees.”).

14 Similar to 35 U.S.C. § 285, which allows for an award of attorneys’ fees in
15 exceptional patent matters only to the prevailing party, Section 505 of the
16 Copyright Act requires a party have “prevailing party” status, which is conferred
17 by a dismissal with prejudice, to pursue attorneys’ fees. *Id.*, at *2.

23 ² This is at least the second post-*Kamal* decision affirmatively citing the holding
24 set forth in *U.S. v. Ito*, 472 F. App’x 841 (9th Cir. 2012) (unpublished) in reaching
25 the same conclusion. See also *Dental Health Servs. Inc. v. Miller*,
26 Case No. C23-0383-KKE, 2024 WL 1173803, at *2 (W.D. Wash. Mar. 19, 2024)
27 (citing *U.S. v. Ito*, 472 F. App’x 841, 842 (9th Cir. 2012) (“The Ninth Circuit has
28 held that parties establish plain legal prejudice if they lose their ability to move for
attorney fees due to lacking prevailing party status.”). Delta included this quote at
page 10 (ECF page 17) of its Opposition (Dkt. 120).

1 Dated: October 1, 2024

Respectfully submitted,
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